

REMARKS

Applicants note that the previous indication of allowable subject matter has been withdrawn and that art-based rejections are newly presented with respect to all pending claims, i.e., claims 1-5, 7-13 and 15-22. By the present amendment, independent claims 1, 12, 21 and 22 have been amended, without prejudice, to more clearly recite the presently claimed subject matter. In particular, independent claims 1 and 12 have been amended to (i) recite devices that advantageously operate as part of the claimed system (claim 1) and claimed method (claim 12), namely a cellular phone, a camera, a watch, a disc player, a black box recorder associated with an airliner, a server and a silo, and (ii) recite that the redundant communications according to the system (claim 1) and method (claim 12) are wireless. Support for the foregoing amendments to independent claims 1 and 12 is found throughout the specification, as filed. Prompt entry thereof is respectfully requested.

Dependent claims 4, 5, 7-9, 13 and 15-17 have been canceled, without prejudice, in view of the amendments to and scope of underlying independent claims 1 and 12. Dependent claim 20 has also been amended to correct an editorial issue and to incorporate the wireless communication modality set forth in underlying independent claim 12.

Independent claims 21 and 22 have been amended to recite a wireless communication modality, as discussed with reference to independent claims 1 and 12. Support for the foregoing amendments are found in

No new matter is introduced by way of the foregoing claim amendments and prompt entry thereof is respectfully requested.

Art-Based Rejections

In the outstanding Office Action, the following art-based rejections were advanced:

- Claims 1, 4, 5, 11-13, 19 and 20 stand rejected under 35 USC § 102(e) based on U.S. Patent No. 6,704,885 to Sala-Meza et al. ("SM");
- Claims 2-3 were rejected under 35 USC § 103(a) based on the SM patent, further in view of a document referenced as "DPU by Microsoft Computer Dictionary" ("MSCD");

- Claims 7, 8, 15 and 16 were rejected under 35 USC § 103(a) based on the SM patent, further in view of U.S. Patent No. 6,154,637 to Wright et al. (the “Wright ‘637 patent”);
- Claims 9 and 17 were rejected under 35 USC § 103(a) based on the SM patent, further in view of the Wright ‘637 patent and U.S. Patent No. 4,604,711 to Benn et al. (the “Benn ‘711 patent”);
- Claims 10 and 18 were rejected under 35 USC § 103(a) based on the SM patent, further in view of “encryption” by MSCD; and
- Claims 21 and 22 were rejected under 35 USC § 103(a) based on the SM patent, further in view of the Wright ‘637 patent and the Benn ‘711 patent.

Of note, the examiner explains the decision to withdraw the previous indication of allowable subject matter as follows:

Applicant’s amendment with respect to claims 1-5, 7-13, 15-22 have been considered but are moot in view of the new ground(s) of rejection. From MPEP 2131 (with emphasis), “When a claim covers several structures or compositions, either generically or as **alternatives**, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art.” [cite omitted] Further, from MPEP 2173.05(h), Alternative expressions are permitted if they present no uncertainty or ambiguity with respect to the question of scope or clarity of the claims. One acceptable form of alternate expression, which is commonly referred to as a Markush group, recites members as being “selected from the group consisting of A, B and C.” [cite omitted] Thus it is clear that Markush groups are claiming something in the alternative, and it is clear that alternatives in claims are anticipated if any of the alternatives are known in the prior art. This forms the basis of the newly applied rejections above.

1. Section 102(e) Rejection

First, applicants acknowledge and agree that independent claims 1 and 12 include Markush groups that recite a plurality of devices that may be advantageously employed in the recited system (claim 1) and method (claim 12) in the alternative. However, with particular reference to independent claims 1 and 12, applicants respectfully traverse the outstanding art-based rejections for at least the following reasons:

- None of the cited references, including specifically the SM patent, discloses, teaches or suggests a system (claim 1) or method (claim 12) for redundant data storage from and including a device selected from the group consisting of a cellular phone, a camera, a watch, a disc player, a server and a silo. To the contrary, the SM patent (and the secondary references relied upon in the outstanding rejections) contemplate, at most, mobile computing environments that consist of “conventional notebook and portable computers, but [increasingly include] thin clients (diskless workstations), handheld personal data assistants, and other forms of portable and highly portable computing devices.” [SM patent, col. 1, lines 46-52.] Applicants respectfully submit that the SM patent, whether taken alone or in combination with the secondary references relied upon in the outstanding Office Action, would not have disclosed, taught or suggested to a person of ordinary skill in the art at the time of filing of the present application (at least as early as October, 2003 based on the non-provisional filing date) the potential benefits and/or utility of a system (claim 1) or method (claim 12) for redundant data storage for purposes of a cellular phone, a camera, a watch, a disc player, a server and a silo.
- Moreover, applicants respectfully submit that the SM patent, whether taken alone or in combination with any of the noted secondary references, failed to disclose, teach or suggest a system/method wherein automatic data redundancy would be achieved based on communication from a cellular phone, a camera, a watch, a disc player, a server or a silo. To the contrary, the cited art fails to demonstrate an appreciation in the art at the relevant point in time that automatic data redundancy should be sought, enabled and/or implemented for devices of the type disclosed and claimed by applicants, i.e., a cellular phone, a camera, a watch, a disc player, a server and/or a silo.
- Further, applicants respectfully submit that the SM patent, whether taken alone or in combination with any other art of record, fails to disclose, teach or suggest a system/method wherein automatic wireless communication is initiated between a first and second communication device “if it is determined that contents within said local memory storage have been modified relative to said prior communication with said

local memory storage.” Applicants disclosed/claimed system and method that initiates wireless communication between the first and second communication elements only if it is determined that the contents of the local memory storage have been modified greatly enhances the efficiency and effectiveness of applicants’ claimed system/method. Applicants respectfully submit that the art of record, and particularly the SM patent, provide a contrary teaching. Indeed, the SM patent contemplates that data communications are initiated when the “client attempts to initiate a connection with the centralized server beginning at a random start time...” [SM patent, Abstract] In other words, the SM patent discloses an inefficient and disruptive data transfer/communication scheme as compared to applicants’ disclosed/claimed system and method.

- Applicants further submit that applicants’ redundant data storage system/method that utilizes automatic wireless communication on a predetermined periodic basis to determine whether contents of a local memory storage have been changed relative to a previous communication with memory storage patentably distinguishes applicants’ pending system/method claims over the art of record. When such automatic wireless communications to achieve up-to-date data redundancy are combined with the unique family of devices recited in independent claims 1 and 12, applicants respectfully submit that the outstanding rejection under Section 102(e) of applicants’ claimed system (claim 1) and method (claim 12) are untenable and should be withdrawn.

In sum, applicants respectfully submit that independent claims 1 and 12, as amended, patentably distinguish over the SM patent, whether taken alone or in combination with one or more of the secondary references cited in the outstanding Office Action. Applicants further submit that dependent claims 11, 19 and 20 patentably distinguish over the SM patent for at least the reasons noted with respect to the underlying independent claim from which they depend.

Accordingly, applicants respectfully request reconsideration and withdrawal of the outstanding Section 102(e) rejection of claims 1, 11, 12, 19 and 20 (the remaining claims included in the Section 102(e) rejection have been canceled, without prejudice.

2. Section 103 Rejections

With reference to the outstanding obviousness rejections directed to applicants' dependent claims 2 and 3 (Office Action, para. 8), and claims 10 and 18 (Office Action, para. 12), applicants respectfully submit that the secondary references fail to cure the deficiencies of the primary reference, i.e., the SM patent, as noted herein above. Accordingly, applicants respectfully submit that such dependent claims, i.e., claims 2, 3, 10 and 18, patentably distinguish over the art of record for at least the reasons noted with respect to the underlying independent claims from which they depend. Reconsideration and withdrawal of the obviousness rejections thereof are respectfully requested.

With reference to the outstanding obviousness rejections of dependent claims 7, 8, 15 and 16 (Office Action, para. 9), and claims 9 and 17 (Office Action, para. 11), applicants note that such dependent claims have been canceled, without prejudice. Accordingly, such obviousness rejections are moot.

Turning to the outstanding obviousness rejection of independent claims 21 and 22 (Office Action, para. 13), applicants respectfully submit that such independent claims patentably distinguish over the proposed combination. Initially, applicants note that an editorial error is believed to appear in the rejection of claims 21 and 22 -- the paragraph that bridges pages 16 and 17 of the Office Action references verbiage that is not found in either of claims 21 or 22. For purposes of the present response, applicants have disregarded the noted paragraph.

Applicants respectfully submit that (i) the examiner has failed to demonstrate a basis upon which the three (3) cited references are properly combined, and (ii) even if the three (3) references are properly combined, such combination fails to disclose, teach or suggest, *inter alia*, a system (independent claim 21) or method (independent claim 22) for effecting redundant data storage that "causes automatic wireless communication between said first communication element and said second communication element if it is determined that contents within said local memory storage have been modified relative to said prior communication with said local memory storage." Each of these points is addressed below.

- Applicants respectfully submit that there is no basis for combining the SM patent, which relates specifically to a distributed computing environment, with the Wright '637 patent and/or the Benn '711 patent, which relate to aircraft flight data systems.

More particularly, applicants respectfully submit that a person of ordinary skill in the distributed computing environment would not be motivated to seek out teachings related to flight data display systems, nor would individuals of ordinary skill in the art in the flight data display field be motivated to seek out teachings in the disputed computing environment. Distributed computing has no relevance to the flight data systems that are disclosed in the Wright/Benn patents, and vice versa. The only basis upon which to combine the teachings of the SM and Wright/Benn patents is applicants' disclosure/claims. Obviously, hindsight reconstruction based on applicants' disclosure/claims is impermissible. For at least this reason, applicants respectfully submit that the outstanding rejection of claims 21 and 22 is erroneous and should be withdrawn.

- Even if the proposed combination of the SM patent and the Wright/Benn patents is proper, applicants respectfully submit that claims 21 and 22 patentably distinguish thereover. In particular and as noted above with respect to independent claims 1 and 12, applicants respectfully submit that the SM patent, whether taken alone or in combination with any other art of record (including specifically the Wright '637 patent and/or the Benn '711 patent), fails to disclose, teach or suggest a system/method wherein automatic wireless communication is initiated between a first and second communication device “if it is determined that contents within said local memory storage have been modified relative to said prior communication with said local memory storage.” Applicants disclosed/claimed system (claim 21) and method (claim 22) that initiates wireless communication between the first and second communication elements only if it is determined that the contents of the local memory storage have been modified greatly enhances the efficiency and effectiveness of applicants' claimed system/method. Applicants respectfully submit that the art of record, and particularly the SM patent, provide a contrary teaching. Indeed and as noted above, the SM patent contemplates that data communications are initiated when the “client attempts to initiate a connection with the centralized server beginning at a random start time...” [SM patent, Abstract] In other words, the SM patent discloses an inefficient and disruptive data transfer/communication scheme as compared to applicants' disclosed/claimed system and method.

For at least the foregoing reasons, applicants respectfully submit that claims 21 and 22 patentably distinguish over the art of record. Reconsideration and withdrawal of the obviousness rejection thereof are respectfully requested.

Conclusion

Applicants submit that all claims are now in condition for allowance. Prompt action leading to an early Notice of Allowance is earnestly solicited. If the examiner believes a telephone communication might be useful in advancing prosecution of this application, the examiner is invited to contact the undersigned representative of applicant.

Respectfully submitted,

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